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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 191[illegible].

No. [illegible]

JOHN HARTON PAYNE, SECRETARY OF THE INTERIOR, AND CLAY TALLMAN, COMMISSIONER OF THE GENERAL LAND OFFICE, APPELLANTS,

vs.

CENTRAL PACIFIC RAILWAY COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 31, 1921.

(25968)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920

No. ~~509~~. 17

John Barton Payne ~~FRANKLIN K. LANE~~, SECRETARY OF THE INTERIOR, AND CLAY TALLMAN, COMMISSIONER OF THE GENERAL LAND OFFICE, APPELLANTS,

vs.

CENTRAL PACIFIC RAILWAY COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 Court of Appeals of the District of Columbia.

No. 3012.

CENTRAL PACIFIC RAILWAY COMPANY, etc., Appellant,
vs.
FRANKLIN K. LANE, etc., et al.

Supreme Court of the District of Columbia.

In Equity. No. 33481.
CENTRAL PACIFIC RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
FRANKLIN K. LANE, Secretary of the Interior, and CLAY TALLMAN, Commissioner of the General Land Office, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill of Complaint.

Filed June 3, 1915.

In the Supreme Court of the District of Columbia.

In Equity. No. 33481.

CENTRAL PACIFIC RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
FRANKLIN K. LANE, Secretary of the Interior, and CLAY TALLMAN, Commissioner of the General Land Office, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court:

The plaintiff respectfully represents:

1. That it is a body corporate, duly incorporated, organized
2 and existing under and in accordance with the laws of the State of Utah; and brings this its bill of complaint against Franklin K. Lane, a citizen of the State of California, residing in the District of Columbia, and Clay Tallman, a citizen of the State of Nevada, and residing in the District aforesaid, in respect of the matters and things hereinafter set forth.

2. That, at the several times hereinafter referred to, the defendant, Franklin K. Lane, was, and he still is, Secretary of the Interior Department of the United States, and as such, has charge of the administration of the laws of the United States relating to the public lands, and the administration of all land grants made by Congress including any portion of said public lands; and that the defendant, Clay Tallman, was, and he still is, Commissioner of the General Land Office of the United States, the latter being one of the branches of said Department of the Interior, having immediate charge of the matter of the administration of the public lands of the United States, and of land grants made by Congress, said Commissioner acting therein under the direction, supervision and approval of the Secretary of the Interior; and that each said defendant is sued in his official capacity as such Secretary of the Interior and Commissioner of the General Land Office, respectively, as hereinafter set forth.

3. That, by act of Congress, approved July 25, 1866, (14 Stat. 239) entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon," authority was given to the California and Oregon Railroad Company, a corporation organized and existing under the laws of the State of California, to construct a railroad and telegraph line under certain conditions and stipulations as expressed in said act; and by the second section of said act a grant of land was made to certain corporations named in the act, including specifically said California and Oregon Railroad Company, said grant being thus:

"And be it further enacted, That there be, and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, preempted or otherwise disposed of, other lands designated as aforesaid, shall be selected by said companies in lieu thereof; under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. * * *"

And by section four of said act, it was thus provided:

"And be it further enacted, That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three commissioners, whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commissioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminous with the completed section of said railroad and telegraph line as aforesaid; and from time to time whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued."

And section five of said act provided in part:

"And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States."

And by section six of said act, it was provided:

"And be it further enacted, That the said companies shall filed their assent to this act in the Department of the Interior within one year after the passage thereof and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same *gague* (gauge) as the 'Central Pacific Railroad' of California, and be connected therewith."

4. That said California and Oregon Railroad Company duly accepted the grant so made to it in said act, and duly filed its assent in that behalf; and, thereafter, duly constructed and completed a line of railroad from Roseville, California, to the California-Oregon State line, within the time limited therefor, (as extended by a certain further act of Congress, approved June 25, 1868, 15 Stat., 80).

5. That said California and Oregon Railroad was fully constructed, completed, and equipped, and accepted by the President of the United States, after sworn report by commissioners, as required by the granting act aforesaid, and each, every and all of the

4 conditions, sipulations and requirements of said land grant were and have been fully met and satisfied.

6. Plaintiff further shows that the line of railroad so constructed by the California and Oregon Railroad Company, as above, connected, at Roseville, California, with the line of railroad of the Central Pacific Railroad Company, of California, said last-named corporation being one of the companies named in said act of July 25, 1866; and that, thereafter, to wit, June 28, 1870, certain articles of agreement were entered into, under and in conformity to the laws of the State of California, by and between said Central Pacific Railroad Company of California and Western Pacific Railroad Company, a California corporation, whereby said two Companies became amalgamated and consolidated, under the name and style of Central Pacific Railroad Company; that thereafter, to wit, on August 22, 1870, certain further articles of agreement were entered into under and in conformity to the laws of the State of California, by and between said California and Oregon Railroad Company and said Central Pacific Railroad Company, whereby said two companies became amalgamated and consolidated, under the name Central Pacific Railroad Company; duly certified copy of such articles of consolidation, thereafter, having been duly filed in the said General Land Office; and by reason of all whereof, the said Central Pacific Railroad Company became the legal successor in interest of all the rights, titles, properties, and franchises of the corporations named, including the certain land grant so made to the California and Oregon Railroad Company, by the act of July 25, 1866, supra.

7. And plaintiff further shows that, subsequently, to wit, July 29, 1899, said Central Pacific Railroad Company executed a deed of conveyance to the Central Pacific Railway Company, the plaintiff herein, of all of its rights, titles, properties, and franchises, including the land grant so made to the California and Oregon Railroad Company, supra, whereby plaintiff company has succeeded to all of the rights, titles, and interest therein and thereto as so heretofore granted by Congress, as hereinabove set forth; and, thereafter, to wit, March 8, 1900, (29 L. D., 589) the then Secretary of the Interior of the United States directed the issuance of land patents in the name of plaintiff company, as such successor, as aforesaid, on account of the land grants made to the Central Pacific Railroad Company, by the acts of Congress, approved July 1, 1862, (12 Stats., 489), and July 2, 1864, (13 Stat., 356), and to said California and Oregon Railroad Company, by said act of Congress, approved July 25, 1866, (14 Stat., 239).

8. That, by the provisions of a certain other act of Congress, approved March 3, 1887, (24 Stat., 556), the Secretary of the Interior was "authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads, and heretofore unadjusted;" and although the fact is that the railroad of said California and Oregon Railroad Company, provided for in the granting act of July 25, 1866, supra, has long since been fully constructed, completed, equipped and operated for a great many

5 years, with all of the incidental benefits to the United States, as fixed and provided by said granting act, the land grant itself remains unadjusted.

9. Plaintiff further shows that in the adjustment of the land grant of said California and Oregon Railroad Company, so now owned by plaintiff, as successor, as aforesaid, divers losses have been sustained of lands within the place limits of the grant, by reason and because of the certain prior rights and claims to individual tracts within the place limits, as set forth in section 6, of said act of July 25, 1866, supra, and hereinabove set forth; thereby making it necessary for plaintiff company, as such successor in interest, as aforesaid, from time to time, to make selections of lands within the limits of said indemnity grant in order to make up losses so sustained of lands within the place limits of said grant; and in this connection plaintiff says that if the available indemnity lands shall be permitted to be devoted by the Secretary of the Interior to other purposes adverse to the grant it will be impossible in large part hereafter to make up the deficiencies of losses of lands within the place limits of the grant. Plaintiff shows further that within the place or granted limits of said grant there is a present ascertained loss of several thousand acres of land by reason of said land being found to have been granted, sold, reserved, occupied by homestead settlers, preempted or otherwise disposed of at the date of location of said road opposite the lands so lost to said grant; that in addition to said ascertained loss there is a further known loss of unsegregated place lands for the reasons above stated of many hundred acres and that in the further adjustment of said grant further losses within the place limits will almost certainly be discovered; that the extent of such further loss cannot be definitely or even approximately ascertained at this time.

10. That the granting act of July 25, 1866, supra, constituted a contract between the United States and said California and Oregon Railroad Company, the indemnity grant therein contained being as much a part of said contract itself as the primary grant therein and thereby made; and said granting act and contract conferred and was intended to confer upon the grantee, California and Oregon Railroad Company (including the plaintiff herein as its lawful successor in interest), a substantial right to the amount of lands within the indemnity limits prescribed by said granting act, necessary to fill the loss to the grant of lands within place limits; and while the indemnity lands so granted by the act above mentioned are required to be selected under the direction of the Secretary of the Interior the authority of the Secretary is limited to the exactions found in said granting act, namely, that at the date of the indemnity selection of any particular tract or tracts of land, tendered to and certified by the local land officers, there existed no adverse claim to or reservation of the land selected; that the land is not known to contain mineral of value, and that good and valid base is offered for the indemnity selection; no discretion or authority being vested in said Secretary by the provisions of said act of July 25, 1866, supra, either to

6 lessen, impair, or defeat said indemnity grant, either in whole or in part, by devoting such indemnity lands to other uses and purposes adverse to the grant.

11. That, notwithstanding full performance on the part of said railroad grantee, as above, plaintiff is limited in its selection of indemnity lands to such thereof as have been surveyed; that certain areas of said indemnity lands now otherwise available for selection by plaintiff remain unsurveyed, thus preventing selection thereof by plaintiff until after the survey thereof shall have been made and the official plat thereof filed in the local land office of the district wherein the lands are situate when it is required to make formal presentation of its claim at such local land office through selection; while settlements by individuals are permitted to be made upon unsurveyed lands falling within the indemnity limits aforesaid, such settlements being given precedence over plaintiff's selections filed upon survey, as above.

12. That in addition to claims of individuals initiated through settlement upon said indemnity lands while unsurveyed, as above, the land grant aforesaid has been and is being further sought to be lessened, impaired, and defeated, in large part, by the creation of public reserves of divers kinds; and this too even in respect of lands embraced in a pending indemnity selection awaiting formal approval for patent, as hereinafter more fully set forth.

13. And plaintiff shows that, on February 24, 1910, it filed its certain indemnity selection list No. 28 in the local land office at Redding, California, serial 01667 (now Sacramento serial 05361), the same embracing, inter alia, the N. E. ¼ N. W. ¼ S. E. ¼ and S. ½ S. E. ¼ of section 5, township 32 north, range 9 west, Mount Diablo, meridian, California, assigning good, sufficient, and valid base therefor of tracts in equal area lost to plaintiff within the primary or place limits of the certain grant aforesaid, the same being duly specified and set forth in said list of selections, and which list of selections was accompanied by the fees collectible by law and otherwise met in every requirement the rules and regulations of the Department of the Interior in respect of making and filing railroad indemnity selection lists; and said selection was duly certified by the register and receiver of said local land office under date March 5, 1910.

Plaintiff attaches hereto, and asks that the same be taken and considered as a part hereof, true and correct copies of the several certificates and vacant, unappropriated, and nonmineral affidavit filed in support of the above indemnity selection list and also of the two certificates of the local land officers attached thereto, certifying to the sufficiency and validity of the base lands offered for the indemnity selection and to the legal availability of the indemnity lands so selected; the same being marked exhibits A, B, C, D and E, respectively.

14. And plaintiff further states that the above described lands, so sought in indemnity selection by it, are parts of an odd-numbered

section within the limits of the indemnity grant so contained in said act of July 25, 1866, supra; and that, at the date of filing said list of selections in the local land office, as aforesaid, the same were
7 vacant, unoccupied, unappropriated lands, nonmineral in character, and free and clear of and from the claim of any person whomsoever, and were not embraced in any reservation theretofore made either by the President of the United States, by Congress, or by any of the Executive departments of the Government of the United States; and the tracts aforesaid were and are needed by plaintiff in partial satisfaction of the grant aforesaid.

15. Plaintiff further states that, in accordance with the rules, regulations, and practice of the Department of the Interior, said local land office duly transmitted said certified selection list, along with the monthly returns from said local land office, to the Commissioner of the General Land Office for appropriate consideration and ultimate patenting of the lands embraced therein to plaintiff.

16. And plaintiff says that while the certain indemnity selection list aforesaid was so certified by the local land officers on March 5, 1910, and, thereupon, forwarded to the Commissioner of the General Land Office for appropriate action and disposition, as above, no action was had thereon, so far as the certain tracts aforesaid are concerned when, on November 25, 1911, power-site reserve No. 232 was ordered created and established, by Executive order of that date, and, thereafter promulgated as an attempted withdrawal of the lands included therein by General Land Office letter "F", of December 9, 1911, said Executive order having been given and made under the assumed authority of the provisions of a certain act of Congress, approved June 25, 1910 (36 Stat., 847), and which attempted withdrawal aforesaid included the certain tracts hereinabove described.

That said act of Congress approved June 25, 1910, is in words following, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress.

"Sec. 2. That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates; Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearings lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occu-

pant or claimant shall continue in diligent prosecution of said work. And provided further, That this Act shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands
8 after any withdrawal of such lands made prior to the passage of this Act: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

"Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals."

17. And plaintiff shows that, thereafter, and on January 16, 1915, the defendant, Commissioner of the General Land Office, by his office letter "N", held for rejection and cancellation plaintiff's indemnity selection of the certain tracts aforesaid, upon the ground, and upon that ground only, that said tracts had been included in the above power-site reserve No. 232 of November 25, 1911 (the attempt to create and establish the same, however, having been made long subsequent to the indemnity selection thereof by plaintiff, as above stated).

Said defendant, Commissioner of the General Land Office, in further support of his ruling aforesaid, cited what is known as administrative ruling, made by the defendant, Secretary of the Interior, July 15, 1914 (reported in 43 Land Decisions of the Department of the Interior, at page 293), and wherein said defendant, Secretary of the Interior, maintains the right, assumed to have been conferred by the above act of June 25, 1910, to withdraw, inter alia, selected railroad indemnity lands at any time prior to the approval by him of such pending selections.

18. Plaintiff duly appealed from the decision of the defendant, Commissioner of the General Land Office, to the defendant, Secretary of the Interior, assigning, as error, the following:

In holding for cancellation the selection of said tracts because of power-site reserve No. 232, made by Executive order of November 25, 1911, letter "F", December 8, 1911, this under the assumed authority of administrative ruling of July 15, 1914 (43 L. D. 293), the latter being based upon the authority supposed to be found in the act of Congress of June 25, 1910 (36 Stat. 847).

Error in holding that the company's right to said indemnity lands, which was secured to it by a solemn contract between it and the Government and where the railroad grantee has long since fully performed its part of the contract and fully earned its land grant, can now be impaired or defeated by the Government in attempting to devote the lands so granted to some other purpose or use adverse and hostile to the railroad grantee.

9 Error in holding that the Government, by the establishment of power-site reserves, or otherwise however, can deprive the railroad grantee of its land grant, either in whole or in part.

But plaintiff says that said Secretary, by his decision dated March 30, 1915 (promulgated April 5, 1915), affirmed the said decision of the commissioner as to the tracts mentioned, his full decision in respect of said tracts and of the question raised upon said appeal being thus:

"Upon this appeal it is contended that administrative ruling of July 15, 1914 (43 L. D. 293), is erroneous, and that no part of the land involved in said list should be canceled because included in power-site reserve 232, as stated and held by the commissioer.

"The record has been examined, and the facts are found to be as stated in the commissioner's decision. No further discussion as to said administrative ruling is considered necessary. Suffice it to say that such rule is adhered to, and the decision of the commissioner is affirmed so far as certain portions of the land involved are eliminated from the railway selection list."

19. That plaintiff, thereupon, and within the time therefor limited by the regulations and rules of practice of the Department of the Interior, filed motion for rehearing of the certain departmental decision aforesaid; but the same was thereafter, on the 27th day of May, 1915, overruled and denied by the defendant, Secretary of the Interior, and the record in said case returned, or is about to be returned, to the defendant, Commissioner of the General Land Office, for the purpose and with directions to make final the said decision adverse to plaintiff company, to finally reject plaintiff's indemnity selection of the tracts aforesaid, and to close the case.

20. And plaintiff says that it has now completely exhausted its rights of appeal, review, and rehearing in said Department of the Interior and in said General Land Office, in respect of its claim to said tracts of land, and that no further opportunity for hearing or review of the question aforesaid, or for the further assertion therein of its claim to said tracts of land, is afforded by the regulations and rules of practice of said department, or by any law or act of Congress in such case made and provided; and that its only remaining remedy is by appropriate appeal to the courts for relief from the rulings aforesaid, and which rulings, as plaintiff is advised by counsel, and, accordingly, so avers, are erroneous in matter of law.

21. Plaintiff states that, by full construction of the railroad provided for by the certain granting act hereinabove mentioned, and otherwise fully complying with the terms, conditions, and exactions

thereof, the right and title to the lands embraced in this suit has been fully earned, and that the same are needed in partial satisfaction of said grant; but that nevertheless the right of plaintiff in the premises is sought to be defeated by the unauthorized and arbitrary action of the defendants, as herein aforesaid.

22. And plaintiff further states that if the certain action hereinabove set forth be permitted to stand, it will deprive plaintiff of a valuable part of the land-grant so heretofore made by Congress, as aforesaid, and for which the United States received valuable consideration; will be in violation of the statutory contract accomplished and effected by said granting act of July 25, 1866, supra; will limit and, to the extent of the tracts of land described, will defeat the will of Congress as expressed in said grant, and this, too, after the said grantee has performed in full the several conditions in consideration whereof the grant was made; and will further result in the unlawful taking of the private property of this plaintiff for public use without compensation, and without the consent of plaintiff, and to its irreparable loss, damage, and injury, and for which plaintiff has no adequate remedy at law and is otherwise remediless except in equity.

Wherefore, premises considered, the plaintiff prays:

1. That the process of this court issue directed to the defendants, Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, requiring them, and each of them, to appear and make answer unto the foregoing bill of complaint, but not under oath, answer under oath being hereby expressly waived.

2. That upon the filing of this bill or at such short day thereafter as shall be fixed by the court a preliminary order may issue herein restraining and enjoining, pendente lite, the defendants, their successors in office, and each, every and all persons claiming to act under their, or either of their, authority or control, from enforcing any or either of the certain rulings, holdings, and decisions mentioned and complained of in the foregoing bill of complaint or from canceling or rejecting the certain indemnity selection so heretofore made by plaintiff of the N. E. ¼ N. W. ¼ S. E. ¼ and S. ½ S. E. ¼ of section 5, township 32 north, range 9 west, Mount Diablo meridian, California.

3. That, upon final hearing, said restraining order and injunction may be made perpetual, and that mandatory injunction may issue against said defendants, commanding and requiring that each of the certain rulings, holdings, and decisions aforesaid be vacated and set aside, and that the right granted and secured to plaintiff under the certain granting act herein aforesaid be recognized, respected, and given its full legal force and effect, excluding from any and all consideration in connection with plaintiff's indemnity selection of the tracts aforesaid the certain power-site reserve referred to in the foregoing bill of complaint.

4. And that plaintiff may have all such other and further relief as the nature of its case may demand and require and as may be agreeable to equity.

CENTRAL PACIFIC RAILWAY COMPANY,
[SEAL.] By WM. F. HERRIN, *President.*

Attest:
G. L. KING, *Secretary.*
A. A. HOEHLING, Jr.,
Attorney for Plaintiff.

11 The defendants to this bill of complaint are—
1. Franklin K. Lane, Secretary of the Interior.
2. Clay Tallman, Commissioner of the General Land Office.

EXHIBIT A.

Office of the Central Pacific Railway Company.

SAN FRANCISCO, CALIFORNIA, *January 15, 1910.*

I, G. L. King, Secretary of the Central Pacific Railway Company (successor to "The Central Pacific Railroad Company of California" and "The California and Oregon Railroad Company"), hereby certify that B. A. McAllaster was appointed Land Commissioner of the said Central Pacific Railway Company, by the Board of Directors of said Company, at a meeting held on the twenty-sixth day of September, 1908, which appointment was made effective from the twenty-first day of September, 1908, and that since that time he has been continuously, and is now, the Land Commissioner of the said Company.

In testimony whereof, I have hereunto set my hand and affixed the Corporate Seal of the said Company, this 15th day of January, 1910.

[Corporate Seal.] G. L. KING,
Secretary of the Central Pacific Railway Company.

EXHIBIT B.

List of Lands in the Redding Land District, California, Selected by the Central Pacific Railway Company, Successor to "The California and Oregon Railroad Company."

The undersigned, the duly authorized Land Commissioner of the Central Pacific Railway Company (successor to "The Central Pacific Railroad Company of California" and "The California and Oregon Railroad Company"), under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the act amendatory thereof, approved June 25, 1868, and under and in

pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Central Pacific Railway Company, successor to the said "The California and Oregon Railroad Company, as inuring to it, and to which it is entitled, under and by virtue of the said act of Congress and the act amendatory thereof, and in virtue of the location of the line of route of the said railroad and telegraph line of said California and Oregon Railroad Company.

B. A. McALLASTER,
Land Commissioner of Central Pacific Railway Company.

12 EXHIBIT C.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

B. A. McAllaster, being duly sworn, deposes and says: I am the Land Commissioner of the Central Pacific Railway Company. The foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Central Pacific Railway Company (successor to "The Central Pacific Railroad Company of California" and "The California and Oregon Railroad Company"), under and by virtue of an act of Congress entitled "An act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," approved July 25, 1866, and the act amendatory thereof approved June 25, 1868. The said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands and are of the character contemplated by the granting act, lying within the limits of thirty (30) miles on each side of the line of route of the said railroad.

B. A. McALLASTER.

Subscribed and sworn to before me, this 15th day of January, 1910.

[NOTARIAL SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT D.

United States Land Office.

SACRAMENTO, CAL., *Feb. 21, 1910.*

We hereby certify that we have carefully examined the records in this office as to the lands described in Redding Indemnity List No. 28 of the Central Pacific Railway Company, successor to "The California and Oregon Railroad Company," alleged to be lost within the

20-mile limits of its grant in the Sacremento Land District, and we find that each and every tract of said land in said list is within the 20-mile limits of said grant, and has been lost to it in place as alleged therein.

JOHN F. ARMSTRONG, *Register.*
JOHN C. ING, *Receiver.*

EXHIBIT E.

United States Land Office.

REDDING, CALIFORNIA, *March 5th, 1910.*

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Central Pacific Rail-
13 way Company (successor to "The Central Pacific Railroad Company of California" and "The California and Oregon Railroad Company"), and selected by B. A. McAllaster, the duly authorized Land Commissioner of the said company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify that the lands described are surveyed, lie within the limits of thirty miles on each side of the line of route of said railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, preemption, State, or other valid claim on file or of record in this office.

We further certify that the said Land Commissioner has paid to the undersigned, the receaver, the sum of one hundred twenty-eight ($128.00) dollars, in full payment and discharge of fees of register and receiver on said list, and that the said list has been filed and approved.

C. W. LEININGER, *Register.*
L. L. CARTER, *Receiver.*

DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, a notary public in and for the District aforesaid, personally appeared A. A. Hoehling, jr., who, being by me first duly sworn, on oath, says: that he is attorney for the Central Pacific Railway Company, a corporation, duly created, organized, and existing under the laws of the State of Utah, said corporation being the plaintiff named in the foregoing and annexed bill of complaint; that he has read the foregoing bill of complaint and is acquainted with the contents thereof, and that the several matters and things therein set forth and contained are true, as he verily believes.

A. A. HOEHLING, Jr.

Subscribed and sworn to before me this 3d day of June, A. D. 1915.
[SEAL.]
RAYMOND B. DICKEY,
Notary Public, D. C.

Rule to show cause.

Filed June 3, 1915.

* * * * * * *

Upon consideration of the bill of complaint herein, and upon application in that behalf made, it is, by the court, this 3d day of June, A. D. 1915, ordered:

That Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, defendants, show cause to this court if any they have, on Friday, the 18th day of June, A. D. 1915, at 10.00 o'clock a. m., why preliminary injunction and restraining order should not issue as prayed in said
14 bill of complaint; provided, a copy of said bill and of this rule to show cause be served upon said defendants, respectively, on or before the 11th day of June, A. D. 1915.

WALTER I. MCCOY, *Justice.*

Marshal's Return.

Served a copy of the within rule on Franklin K. Lane and Clay Tallman personally June 3, 1915.

MAURICE SPLAIN, *Marshal.*
S.

Return to Rule to Show Cause.

Filed October 15, 1915.

* * * * * * *

Come now the defendants in the above-entitled cause, by their attorneys, and by way of return to the rule to show cause why preliminary injunction and restraining order should not issue as prayed in the bill of complaint, say that they elect to stand upon those matters of law set forth in their motion to dismiss the bill herein filed.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney.

Motion to Dismiss.

Filed October 15, 1915.

* * * * * * *

Come now the defendants in the above-entitled cause, by their attorneys, and move to dismiss the bill herein filed; and for cause, show:

1. That the plaintiff has not in or by its bill exhibited a cause for the relief prayed for or for any relief in equity.

2. That as appears on the face of the bill the land selected and demanded by the plaintiff is public land of the United States reserved and withdrawn by order of the President of the United States as a power-site withdrawal made by him pursuant to an act of Congress.

3. That under the law said withdrawal or reservation remains in full force and effect until revoked by the President or by act of Congress; and that under the law authorizing the reservation or withdrawal of land for the purpose and in the manner in which the
15 land in controversy in this cause was withdrawn or reserved, Congress has enumerated the class of claims and those only which Congress excepted from the effect of such withdrawals; and that among the exceptions so enumerated, to wit, in the act of June 25, 1910, set out in paragraph 16 of the bill, railroad selection lists—or lands scheduled for selection by any railroad under any railroad land grant—are not excepted.

4. That under existing law no right to land within the indemnity limits of its grant vests in the plaintiff under any selection thereof made by it under the authority of any act of Congress, until such selection has been duly approved by the Secretary of the Interior; and that as to the land selected by the plaintiff as set forth in the bill herein filed, the Secretary of the Interior by operation of the Executive order duly made by the President of the United States, withdrawing said land from settlement, location, sale, or entry, is, and since November 25, 1911, has been without any authority to approve the selection list filed by the plaintiff in so far as it includes the land described in the bill aforesaid.

5. That the relief sought or any substantial relief that, premises of the bill considered, the court could extend, would involve judicial interference with, and control of, a matter within the exclusive jurisdiction of the Secretary of the Interior, and involving the exercise of his judgment and discretion.

6. That legal title to the land is and remains in the United States and that upon the question as to whether it is now donated and withdrawn for public purposes of the United States by virtue of the Executive order of the President or belongs to the plaintiff by some character of title which plaintiff may be heard to assert in a court of law or equity, the United States is entitled to be heard, is a neces-

sary party to the suit, and has not been made a party herein, nor, furthermore, has it, in this behalf, consented to be sued.

Wherefore they pray that the bill may be dismissed with their reasonable costs, and that they may be permitted to go hence without day.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney.

Opinion.

Filed July 24, 1916.

* * * * * * *

The plaintiff filed a list of selections of lands within the indemnity limits specified in its grant to take the place of lands lost within the primary limits. Thereafter Congress passed the act approved
16 June 25, 1910 (36 Stat. L. 847), authorizing the withdrawal of lands for power-site reserves. The land in question having been withdrawn in pursuance of the statute, the Secretary of the Interior refused to approve of plaintiff's list of selections.

The Supreme Court said, in Wisconsin R. R. Co. vs. Price County, 133 U. S. 496, 513, referring to opinions of attorneys general:

"The uniform language is, that no title to indemnity lands becomes vested in any company or in the State until the selections are made, and they are not considered as made until they have been approved, as provided by statute, by the Secretary of the Interior."

In Sjoli vs. Dreschel, 199 U. S. 564, 565, the court said:

"From the numerous cases in this court relating to the above act of July 2, 1864, the following propositions are to be deduced: * * *

"That no rights to lands within indemnity limits will attach in favor of the railroad company until after selections made by it with the approval of the Secretary of the Interior.

"That up to the time such approval is given lands within indemnity limits, although embraced by the company's list of selections, are subject to be disposed of by the United States or to be settled upon and occupied under the preemption and homestead laws of the United States; * * *."

This language was quoted with approved in Osborn vs. Froyseth, 216 U. S. 571, 578. In Stalker vs. Oregon Short Line, 225 U. S. 142, 149, the court says:

"The principle is that which has been many times applied in conflicting claims to indemnity lands, under railroad land grants. In such cases the patent, when issued, is held to relate to the date of the filing of the railroad company's list of selections in lieu of place lands lost, thereby defeating adverse rights initiated after the actual filing of the list of selections. The same rule has likewise been applied to lists of selections made by States to which a grant has been made subject to location. In both classes of cases it has been many times ruled that while no vested right against the United States is acquired until the actual approval of the list of selections, the company does acquire a right to be preferred over such an intervenor. In other words, the patent, when issued, relates back to the initiatory right and cuts off all claimants whose rights were initiated later. The question was fully reasoned out and the cases reviewed in Weyerhaeuser vs. Hoyt, 219 U. S. 380, and we can add nothing to the conclusiveness of that case."

In view of these positive statements by the Supreme Court and especially because of what is said in Stalker vs. Oregon Short Line, supra, the court feels constrained to hold that the bill must be dismissed.

On these authorities the motion to dismiss is sustained. Serve copy of proposed decree with two days' notice of settlement.

By the court:

WALTER I. McCOY, *Justice.*

17 *Decree.*

Filed July 26, 1916.

* * * * * * *

This cause came on to be heard on defendants' return to the rule to show cause and upon the motion to dismiss plaintiff's bill of complaint, and was argued by counsel; whereupon, on consideration thereof, the court having been fully advised in the premises, it is, this 26th day of July, 1916,

Ordered, adjudged, and decreed, That the rule to show cause herein issued, be, and the same is hereby, discharged, that the motion to dismiss be, and the same is hereby, sustained, and that the bill of complaint herein filed be, and the same hereby is, dismissed, with costs to the defendants to be taxed by the clerk.

By the Court:

WALTER I. McCOY, *Justice.*

From the foregoing decree, plaintiff prays an appeal in open court to the Court of Appeals, and the same is hereby allowed; and the appeal bond for costs is fixed at $100, or a deposit of $50, in lieu thereof.

By the Court:

WALTER I. McCOY, *Justice.*

Assignments of Error.

Filed July 26, 1916.

* * * * * * *

The appellant, Central Pacific Railway Company, a corporation, hereby designates the following assignments of error in the certain final decree of the court, entered in the above-entitled cause, July 26, 1916, dismissing the bill of complaint filed therein by plaintiff:

1. In failing to find and hold that a grant made by the Congress of the United States to aid in the construction of a railroad is not a gratuity but a contract; and, that by constructing the road and putting it in operation, the grantee performed its part of the contract and became entitled to performance by the Government.

2. In failing to find and hold that as the grant of Congress was of a specific number of sections, it was intended that the beneficiary was to receive, if possible, the full amount granted.

3. In failing to find and hold that the power of approval vested in the Secretary of the Interior over indemnity selections made in satisfaction of a grant of Congress to aid in the construction of a railroad, is judicial in its nature, and for the protection of the United States against an improper appropriation of its lands; and that such power cannot be arbitrarily used in diminution, or to accomplish a partial forfeiture, of the grant.

4. In holding that no right to an odd-numbered section
18 within the indemnity limits of a railroad grant, and needed in partial satisfaction of the grant, attaches upon the selection thereof, nor until the selection thereof has been formally approved by the Secretary of the Interior.

5. In holding that lands within the indemnity limits of a railroad grant, actually selected by the grantee, and of the character subject to such selection, and needed in the partial satisfaction of the grant, may, nevertheless, thereafter, be withdrawn and reserved to the United States, and the indemnity selection thereof thereby defeated.

6. In failing to find and hold that a withdrawal and reservation of lands needed in partial satisfaction of a railroad grant, already earned by construction of the road, amounts to a partial forfeiture of the grant by Executive action.

7. In failing to find and hold that the act of Congress, approved June 25, 1910, (36 Stat., 847), authorizing the withdrawal of lands for power-site purposes is limited to the public lands of the United States; and does not include lands within the limits of a railroad indemnity grant, to which the right of selection has attached by the building of a railroad, such lands being needed in partial satisfaction of the grant, in lieu of lands lost to the grant within the primary or place limits, and where such lands have been selected by the railroad grantee, and such selection is pending merely awaiting formal

approval for patent at the time of the attempted withdrawal and reservation of such lands.

8. In holding that the selection made by appellant, on February 24, 1910, of the lands involved in this suit, the same being non-mineral in character, designated by odd-numbers, within the indemnity limits of a railroad land-grant, and of the character subject to such selection, and needed in partial satisfaction of the grant, is nevertheless, defeated by the attempted withdrawal or reservation of said lands made in its own favor by the United States, the grantor thereof, for power-site purposes, November 25, 1911.

9. In discharging the rule to show cause and in granting defendants' motion to dismiss plaintiff's bill filed for the purpose of restraining the defendant from cancelling plaintiff's selection of lands needed in partial satisfaction of its grant, said lands being of the character subject to selection under the grant.

10. In failing to grant to plaintiff the relief prayed against the acts of defendants in attempted diminution and forfeiture of plaintiff's grant, fully earned by construction of the railroad as provided for in the granting act.

11. In failing to grant the injunction prayed for by appellant, and in dismissing its bill of complaint.

12. Other errors appearing on the face of the record herein.

A. A. Hoehling, Jr.,
Attorney for Appellant.

Service of copy of the above assignments of error acknowledged, this 26 day of July, 1916.

C. Edward Wright,
Attorney for Defendants.

19 *Designation of Record on Appeal.*

Filed July 28, 1916.

* * * * * * *

To John R. Young, Esq., Clerk Supreme Court, D. C.

Dear Sir: On behalf of the above named Central Pacific Railway Company, a corporation, plaintiff and appellant, I request that you will cause to be prepared the transcript of record on appeal in the above entitled cause; and I hereby designate the following to be included in said transcript:

1. Bill of complaint, and all exhibits attached thereto, the same being marked Exhibits A, B, C, D, and E.
2. Rule to show cause.
3. Return of defendants to rule to show cause.
4. Motion of defendants to dismiss the bill of complaint.

5. Opinion of court.
6. Decree discharging rule to show cause, and dismissing the bill of complaint, including endorsement thereon of appeal in open court and order fixing amount of appeal bond for costs.
7. Assignments of error.
8. Memorandum of approval and filing of bond for costs on appeal.
9. This designation.

A. A. HOEHLING, Jr.,
Attorney for said Appellant.

Service of copy of above designation acknowledged, this 26 day of July, 1916.

C. EDWARD WRIGHT,
Attorney for Defendants.

Memorandum.

July 27, 1916.—Bond on appeal for $100 approved and filed.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 33, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33481 in equity, wherein Central Pacific Railway Company, a corporation, is plaintiff, and Franklin K. Lane, Secretary of the Interior, et al., are defendants, as the same remains upon the files and of record in said court.

20 In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 15th day of August, 1916.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By ALF. G. BUHRMAN,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3012. Central Pacific Railway Company, etc., appellant, vs. Franklin K. Lane, etc., et al. Court of Appeals, District of Columbia. Filed Sep. 8, 1916. Henry W. Hodges, clerk.

21 Thursday, March 8th, A. D. 1917.

* * * * * * *

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, appellant,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office. } No. 3012.

The argument in the above-entitled cause was commenced by Mr. A. A. Hoehling, Jr., attorney for the appellant, and was continued by Messrs. C. D. Mahaffie and C. E. Wright, attorneys for the appellees, and was concluded by Mr. A. A. Hoehling, Jr., attorney for the appellant.

22 In the Court of Appeals of the District of Columbia.

CENTRAL PACIFIC RAILWAY COMPANY, A CORPORATION, appellant,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office, appellees. } No. 3012.

(Opinion of the court per Mr. Justice Van Orsdel.)

This suit was filed in the Supreme Court of the District of Columbia by appellant, Central Pacific Railway Company, to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from rejecting and cancelling a list of indemnity railroad lands selected in California.

It appears that the tract of land here in suit, consisting of ninety acres, was selected by plaintiff company February 29, 1910, by list filed in the local land office at Redding, California. The list was certified on March 5, 1910, to the General Land Office, where it remained pending action by the Commissioner until January 16, 1915, when it was held for rejection and cancellation upon the sole ground that the land in question had been included in a water-power-site reserve by Executive order on November 25, 1911, and subsequently withdrawn by the Commissioner, which action was thereafter approved by the Secretary of the Interior.

The selection was made by authority of an act of Congress, approved July 25, 1866 (14 Stats. L., 239), entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon." Section 2 of the act, among other things, provides: "That there be, and hereby is, granted to the said companies, their successors, and assigns, for the purpose of aiding in the construction of said
23 railroad and telegraphic line, and to secure the safe and speedy

transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line." The above is what is known as the grant of primary or place lands, the title to which passed as of the date of the grant. Van Wyck vs. Knevals, 106 U. S., 360.

The act further provides that "when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railway, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified."

The act of Congress of June 25, 1910 (36 Stats. L., 847), under which, by Executive order, the land in question was sought to be withdrawn for a power site, among other things, provides "That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force
24 until revoked by him or by an Act of Congress." The act specifically excludes from its operation "any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act, and * * * all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law."

It is averred by plaintiff company in its bill that the "lands, so sought in indemnity selection by it, are parts of an odd-numbered section within the limits of the indemnity grant so contained in said act of July 25, 1866, supra; and that, at the date of filing said list of selections in the local land office, as aforesaid, the same were vacant, unoccupied, unappropriated lands, non-mineral in character, and free and clear of and from the claim of any person whomsoever, and were not embraced in any reservation theretofore made either by the President of the United States, by Congress, or by any of the executive departments of the Government of the United States;

and the tracts aforesaid were and are needed by plaintiff in partial satisfaction of the grant aforesaid."

This averment is admitted by defendants in the motion to dismiss the bill, but they aver, in justification of their attempted rejection and cancellation of the selection, "that, under existing law, no right to land within the indemnity limits of its grant vests in the plaintiff under any selection thereof made by it under the authority of any act of Congress until such selection has been duly approved by the Secretary of the Interior; and that as to the land selected by the plaintiff as set forth in the bill herein filed the Secretary of the Interior, by operation of the Executive order duly made by the President of the United States withdrawing said land from settlement, location, sale, or entry, is, and since November 25, 1911, has been without any authority to approve the selection list filed
25 by the plaintiff in so far as it includes the land described in the bill aforesaid." It is pointed out in the motion that lands embraced in railroad indemnity lists are not excluded from the provisions of the power-site act.

The right of selection conferred upon the railroad company is a contractural right created by the act of Congress between the United States and the company. Considering the nature of the statutory contract thus created, the court, in the case of Burke vs. Southern Pacific R. Co., 234 U. S., 669, 680, speaking through Mr. Justice Van Devanter, said: "Instead of giving a gratuitous reward for something already done, the act made a proposal to the company to the effect that if the latter would locate, construct, and put into operation a designated line of railroad, patents would be issued to the company confirming in it the right and title to the public lands falling within the descriptive terms of the grant. The purpose was to bring about the construction of the road, with the resulting advantages to the Government and the public, and to that end provision was made for compensating the company, if it should do the work, by patenting to it the lands indicated. The company was at liberty to accept or reject the proposal. It accepted in the mode contemplated by the act, and thereby the parties were brought into such contractural relations that the terms of the proposal became obligatory on both. Menotti vs. Dillon, 167 U. S., 703, 721. And when, by constructing the road and putting it in operation, the company performed its part of the contract, it became entitled to performance by the Government. In other words, it earned the right to the lands described."

It will be observed that the act of Congress under which the land in question was withdrawn as a power site was enacted and withdrawal made after selection by plaintiff company but while the list was awaiting approval by the Secretary of the Interior. The principal question presented, therefore, is, When does a vested in-
26 terest in the railroad company attach to indemnity lands—at the date of selection or at the date of approval? This question has been before the Supreme Court of the United States in many

cases. Ryan vs. Pacific R. Co., 99 U. S., 382; Grinnell vs. Railroad Co., 103 U. S., 739; Kansas Pacific vs. Atchison Railroad, 112 U. S., 414; St. Paul Railroad vs. Winona Railroad, 112 U. S., 720; Barney vs. Winona, etc., Railroad Co., 117 U. S., 228; Sioux City Railroad vs. Chicago Railway, 117 U. S., 406; Wisconsin Railroad Co. vs. Price County, 133 U. S., 496; United States vs. Missouri, etc., Railway, 141 U. S. 358; New Orleans Pacific Railway vs. Parker, 143 U. S., 42; Hewitt vs. Schultz, 180 U. S., 139; Clark vs. Herrington, 186 U. S., 206; Oregon, etc., R. R. Co. vs. United States, 189 U. S., 103.

An examination of the above cases disclosed considerable uncertainty as to the exact date when the right of a railroad company attaches under an indemnity selection. In referring to the date, the court in some instances uses the term "selection"; in others, "selection under direction of the Secretary of the Interior," and in others, "selection with the approval of the Secretary of the Interior." A careful analysis of these decisions, however, discloses an agreement of opinion that the controlling date from which the prior rights of contesting claimants attach is the date of selection. Of course, that these selections should be made "under the direction" or "with the approval" of the Secretary is important for the protection of the Government. After a selection list has been filed, it remains for the Secretary, in his general supervisory capacity over the disposal of the public lands, to investigate and determine whether the lands are subject to selection under the act, and whether the company is entitled to make a selection. But this investigation and approval has nothing to do with fixing the date when the railroad company's interest vests any more than in the case of a homestead entryman whose interest vests from the date of making final proof and receiving
27 his final certificate from the officials of the local land office. The duty still remains in the Secretary of examining into the question of whether or not the homesteader has complied in good faith with the requirements of the law; but when it is found that he has, nothing remains for the Secretary but the ministerial act of issuing a patent, which evidence of title relates back to the date of the final certificate.

Indeed, this power of direction or approval by the Secretary of the Interior in the railroad land grants would have existed without any statement to that effect in the acts of Congress. "It may be laid down as a general rule that, in the absence of some specific provision to the contrary in respect of any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the land department. It falls there unless there is express direction to the contrary." Bishop of Nesqually vs. Gibbon, 158 U. S., 155, 167.

The learned justice below turned this case upon the decision in Sjoli vs. Dreschel, 199 U. S., 564. In that case the court, speaking

through Mr. Justice Harlan, said: "That no rights to lands within indemnity limits will attach in favor of the railroad company until after selections made by it with the approval of the Secretary of the Interior; that up to the time such approval is given, lands within indemnity limits, although embraced by the company's list of selections, are subject to be disposed of by the United States or to be settled upon and occupied under the preemption and homestead laws of the United States; and, that the Secretary of the Interior has no authority to withdraw from sale or settlement lands that are within indemnity limits which have not been previously selected, with his approval, to supply deficiencies within the place limits within the company's road."

28 This language seems on first impression to be conclusive of the point under consideration, and seems to have so affected the rule of procedure established in the Land Department that the Secretary called upon the Attorney General for an opinion as to the application of the decision. The Attorney General (25 Opinions Attorney General, 632), directed that the decision should be applied only to cases where the facts were similar to those in the Sjoli case. This brings us to the facts in the case. Sjoli settled, erected buildings and moved his family on to the land in 1884. In 1889 he applied to the local land office to make entry of the land under the homestead laws. The application was rejected because the land was then erroneously supposed to be within the granted limits of the St. Paul, Minneapolis & Manitoba Railroad Company. Sjoli, still residing upon the land, in 1895, "relying," as stated in the opinion, "upon his settlement in 1884," again applied to enter the land under the homestead act, and was accepted. Thereafter he made final proof, and in due course a patent was issued to him. In 1885, one year after settlement by Sjoli, the railroad company included this land in an otherwise valid indemnity selection. Thereafter it sold the land to Dreschel, who brought the suit. On this state of facts, light is thrown upon the decision. Sjoli was a settler on the land at the date the railroad company filed its selection, a settlement which was never abandoned. He had acquired a prior right over the railroad company. His right to make a homestead entry of the land, and by compliance with the requirements of the homestead laws have the inchoate title initiated by settlement ripen into a valid title, dated from the time of settlement, a year before the railroad company made its selection. The decision is, therefore, in accord with both former and subsequent decisions that a settler on indemnity railroad lands at the date of selection by the railroad company has the prior right. The language used in the decision as to the date when a vested interest attaches was unnecessary to a determination of the case.

29 The question here involved of the exact date on which the interest of a railroad company vests in lands embraced in a valid indemnity selection was for the first time squarely decided in the case of Weyerhaeuser vs. Hoyt, 219 U. S., 380. The court, speak-

ing through Mr. Chief Justice White, said: "It is beyond dispute on the face of the granting act of July 2, 1864, c. 217, 13 Stat., 365, 367, and of the joint resolution of May 31, 1870, c. 67, 16 Stat., 378, extending the indemnity limits, that it was the purpose of Congress in making the grant to confer a substantial right to land within the indemnity limits in lieu of lands lost within the place limits. * * * The right to select within indemnity limits was conferred to replace lands granted in place which were lost to the railroad company because removed from the operation of the grant of lands in place by reason of the existence of the rights of others originating before the definite location of the road. The right to select within indemnity limits excluded lands to which rights of others had attached before the selection, and hence simply required that the selection when made should not include lands which at that time were subject to the rights of others. The requirement of approval by the Secretary consequently imposed on that official the duty of determining whether the selections were lawful at the time they were made, which is inconsistent with the theory that any one could appropriate the selected land pending action by the Secretary."

The facts there were that the Northern Pacific Railroad Company filed an indemnity selection list covering the land in suit, which was erroneously cancelled by order of the Secretary of the Interior. Thereafter one Jones applied to purchase the land under the timber and stone act, made final proof, paid the purchase price, and received a receipt from the local land office. The error in cancelling
30 the selection list was occasioned by a misapprehension of the Secretary as to the location of the eastern terminus of the Northern Pacific Railroad, which was finally determined in Doherty vs. Northern Pacific Ry. Co., 177 U. S., 421. Following this decision the Secretary cancelled the entry of Jones, reinstated the lists of selection previously filed, and patented the lands to the railroad company. The railroad company conveyed the land to Weyerhaeuser, and Jones conveyed his interest to Hoyt. Hoyt began suit on the ground that Weyerhaeuser held the title in trust for him. The Circuit Court of Appeals for the Eighth Circuit sustained Hoyt's contention upon the authority of the decision in the Sjoli case.

The decisions in the Sjoli and Weyerhaeuser cases seem at first blush to be in direct conflict—the former decision holding that the right of the railroad company attaches under a valid indemnity selection at the date of approval by the Secretary of the Interior, the latter decision that it attaches on the date of filing the selection list. This apparent conflict is conclusively disposed of in the Weyerhaeuser decision, where the chief justice reviews the cases prior to the Sjoli decision, and after stating the facts in that case, concludes as follows: "What we have already said as to the Sjoli case would suffice to dispose of the suggestion concerning that case, but we shall recur to it. As to the other cases, it would be adequate to say that not one of them involved the question here under consideration, nor even by way of *obiter* was an opinion expressed on such question. Indeed,

all the cases relied upon may be placed in one of three classes: *a*, those involving the nature and character of the right, if any, to indemnify lands prior to selection; *b*, whether such lands, after the filing of a list of selections and before action by the Secretary of the Interior thereon, could be taxed by a State to the railroad company as the owner thereof; and, *c*, those which were concerned with the nature and character of acts which were adequate to
31 initiate a right to public lands which would be paramount to a list of selections when the acts were done before the filing of the list of selections. In none of the cases, moreover, was the well-settled doctrine of this court as to relation, even by remote implication, questioned. Indeed, in most of the cases relied upon the previous decisions to which we have referred to expounding the doctrine of relation were approvingly cited or expressly reaffirmed. The *Sjoli case*, from the facts we have already stated, is clearly here inapplicable, because it falls in the third of the above classes. If it be conceded that general language was used in the opinion in that case which when separated from its context and disassociated from the issues which the case involved, might be considered as here controlling, that result could not be accomplished without a violation of the fundamental rule announced in Cohens vs. Virginia, 6 Wheat., 399, so often since reiterated and expounded by this court, to the effect that 'General expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.' The wisdom of the rule finds apt illustration here when it is considered that not even an intimation was conveyed in the *Sjoli case* of any intention to overrule the repeated prior decisions of this court concerning the operation and effect of the doctrine of relation upon the approval, by the Secretary of the Interior, of a lawful list of selections. That the general expressions in the *Sjoli case* are not persuasive here clearly results from the demonstration which we have previously made that to apply them would be in effect to destroy the indemnity provisions of the granting act."

The contention that we are without jurisdiction in this case to control the action of the Secretary by injunction is without
32 merit. The discretionary power of the Secretary is not involved. The indemnity list is conceded to be in regular form and to contain land lawfully subject to selection by the railroad company on the date the list was filed in the land office. Rejection and cancelation of the selection list has been ordered because subsequent to selection the land was attempted to be withdrawn by executive order for a water-power site. This selection being in every respect lawful, the act of Congress conferred upon the railway company the right to make it, and upon the Secretary the duty of approving it and accordingly issuing a patent therefor. His discretion ceased with the finding that the selection had been lawfully made. All

further duties were merely ministerial, and the situation could not be changed by invoking the aid of the intervening power-site act and executive order. The rights of the railroad company had become vested by operation of law, and could not be divested without due compensation either by an act of Congress or by an executive order.

To hold that discretionary power exists in the Secretary to reject or cancel a selection list of indemnity lands conceded by him to have been valid at the date of filing the list in the land office, would be equivalent to vesting him with power to disregard an express mandate of Congress. Congress has provided in different ways for the disposition of the public lands, and to hold that when strict compliance has been made with the requirements of the law the Secretary still has discretion to deny rights acquired thereunder, would be equivalent to endowing him with the power to disregard the law and divest the citizen of rights expressly conferred by law.

In the case of Daniels vs. Wagner, 237 U. S., 547, where a lieu-land application, in every respect in compliance with the law, was made and while pending approval by the Secretary other entries were permitted to be made the question of the discretionary power of the Secretary of the Interior in public land matters was
33 exhaustively considered. Since the situation there in respect of discretionary power was on all fours with the present case, we feel justified in quoting at some length from the opinion of Chief Justice White as follows: "This brings us to determine whether the Land Department has a right to reject a prior lieu land entry or entries and award the land to subsequent and subordinate applicants under the assumption that it possessed a discretionary right to do so, an authority the possession of which was sustained by both the courts below. In primarily testing the proposition from the point of view of principle it is well at once to exactly fix its true import. In doing so it is to be conceded, *a*, that the act of Congress gave the right to one whose land had come to be included by operation of law in a forest or other reservation to apply to the Land Office and obtain the right to enter an equal amount of public land upon the surrender to the United States of the land situated in the reservation, and upon the doing and offering to do everything required by the law or the lawful regulations of the Land Department to be done or offered to be done for that purpose; *b*, that in the particular case the application to enter the lieu land came within the grant of the statute and all that was required by law or lawful regulation was done by the applicant in order to obtain entry, and *c*, that it was the plain duty of the proper authorities of the department on the filing of the entry in due course under the law to grant it. When these conclusions are accepted it results that the claim of discretionary power is substantially this: That in a case where under an act of Congress a right is conferred to make an application to entry public land and a duty imposed upon the department to permit the entry, the department is authorized in its discretion to refuse to allow that to be done

which is commanded to be done and thus deprive the individual of the right which the law gives him. And it becomes moreover certain that the necessary result of this assertion is the following:
34 That although Congress may have the power to provide for the disposition of the public domain and fix the terms and conditions upon which the people may enjoy the right to purchase, it has not done so, since every command which it has expressed on this subject may be disregarded and every right which it has conferred on the citizen may be taken away by an unlimited and undefined discretion which is vested by law in the administrative officers appointed for the purpose of giving effect to the law. When the true character of the proposition is thus fixed it becomes unnecessary to go further to demonstrate its want of foundation."

It follows from a review of the decisions, and especially of the Weyerhaeuser and Daniels cases, that the right of a railroad company under an indemnity selection is to be determined from the status of the land at the date of selection, and where, as in this case, the selection is in all respects lawful at the time it is made, the right of the company attaches as of that date. The language used in the granting acts—"under the direction of" or "with the approval of" the Secretary of the Interior—merely relates to the general supervisory power of the Secretary to determine whether the selections were lawfully made and if so to approve and issue a patent for the lands selected. The discretion of the Secretary being limited to a determination of the right of the railroad company to make a selection and whether or not the land selected meets the requirements of the granting act, it follows, when the selection is found to be in all respects within the provisions of the act, discretion at that moment ceases and nothing remains for the Secretary but the ministerial duty imposed by the conditions of the act of approving for patent.

It is vigorously urged by counsel for the Government that since patent had not passed from the United States to plaintiff railroad company for the land in question, title still remained in the Gov-
35 ernment, and it was within the power of Congress to withdraw the land, and thus destroy plaintiff's claim. It is undoubtedly true that Congress may do with the public lands as it deems proper. It may withdraw from settlement, grant, or purchase any portion of it so long as it remains public domain and adverse rights have not vested. But it by no means follows that this right of withdrawal continues until title passes by issue of a patent. It continues until the purchaser or grantee, as in this instance, complies with all the required prerequisites which would entitle him to a patent. When that is done, a property right is vested which the Government itself can not take away without making due compensation. As was said in Campbell vs. Wade, 132 U. S., 34, 38: "In the present case, before the act withdrawing the lands from sale, which was equivalent to a repeal of the act authorizing the sale, could be held to impair any vested right of the applicant, he must have done every-

thing required by law to secure such right. Until then no contract could arise in any way binding upon the State. No contract right of the petitioner was therefore violated by its legislation."

As we have endeavored to point out, the railroad company has performed every duty imposed upon it by law, leaving in the Secretary only the ministerial duty of approving the selection list and issuing a patent. By the act of Congress plaintiff company was granted a substantial right in these indemnity lands. It was a grant of power under certain prescribed conditions to make selection of lands to reimburse it for place lands lost by settlement or otherwise prior to the grant. The right to exercise this power of selection exists from the date of the survey of the indemnity land. When the power was lawfully exercised, as in this instance, the company had complied with all the prerequisites essential to establish its right. A contract then existed, the obligations of which could not be impaired even by Congress itself. "The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included
36 under the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable." Sinking Fund Cases (Union Pacific R. R. Co. Case), 99 U. S., 700, 718.

Though the right of plaintiff company, as we have shown, rests upon a statutory contract, the same rule is applicable as in the case of a purchaser of public lands under an act of Congress providing the terms upon which they can be disposed of to settlers by the Land Department. The supervisory power of the Secretary only extends to ascertaining whether or not there has been a full compliance with the law. When that is found, or conceded, as here, his supervisory power ceases, and the right of the settler vests. No greater power exists in Congress to interfere with contract rights thus established. "The power of regulation and disposition, conferred upon Congress by the Constitution, only ceases when all the preliminary acts prescribed by those laws for the acquisition of the title, including the payment of the purchase price of the land, have

been performed by the settler. When these prerequisites have
37 been complied with the settler for the first time acquires a vested interest in the premises occupied by him of which he cannot be subsequently deprived. He is then entitled to a certificate of entry from the local land officers and ultimately to a patent for the land from the United States." Yosemite Valley Case, 15 Wall., 77, 87.

It will hardly be contended that a railroad company under a land grant act acquires a property right inferior to that of an entryman upon the public domain. The railroad company in this instance contracted not only to construct its road, but entered into a continuing obligation to furnish free transportation of Government property and troops. It stands in the legal status of a purchaser, who, by payment of the purchase price, acquires an interest of which he can not be divested even by the Government without due compensation.

Nor is there merit in the suggestion that this is a suit against the United States, and the court is therefore without jurisdiction. The term "public lands," as used in our legislation, describes lands subject to sale or other disposition under general laws. Newhall vs. Sanger, 92 U. S., 761; Bardon vs. Northern Pacific Ry. Co., 145 U. S., 535; United States vs. Buchanan, 232 U. S., 72, 76. It logically follows that when lands have passed out of the public domain and become vested in an individual or corporation they are no longer property of the United States. An action, then, to compel the officers of the Government to perform the duty prescribed by law in recognizing the rights so vested, is neither an action against the United States, nor an action affecting property belonging to the United States. It will not do to say that the injunction will have the effect of nullifying an executive order. If the order was made without lawful authority, it was a mere nullity and entitled to no consideration as
against rights already vested. The proper remedy in such
38 cases is by injunction. Lane vs. Watts, 234 U. S., 525, 540.

The action here is to prevent an abuse of discretion by the Secretary growing out of a misapprehension of his duty under the law. "But the power of supervision and correction is not an unlimited or an arbitrary power. It can be exerted only when the entry was made upon false testimony or without authority of law. It can not be exercised so as to deprive any person of land lawfully entered and paid for. By such entry and payment the purchaser secures a vested interest in the property and a right to a patent therefor, and can no more be deprived of it by order of the Commissioner than he can be deprived by such order of any other lawfully acquired property. Any attempted deprivation in that way of such interest will be corrected whenever the matter is presented so that the judiciary can act upon it." Cornelius vs. Kessel, 128 U. S., 456, 460.

The rule was even more positively stated in Ballinger vs. Frost, 216 U. S., 240, 249, as follows: "Whenever, in pursuance of the

legislation of Congress, rights have become vested it becomes the duty of the courts to see that those rights are not disturbed by any action of an executive officer, even the Secretary of the Interior, the head of a department. However laudable may be the motives of the Secretary, he, as all others, is bound by the provisions of Congressional legislation." This was but an approval of Garfield vs. Goldsby, 211 U. S., 249, 262, where the court said: "There is no place in our constitutional system for the exercise of arbitrary power, and if the Secretary has exceeded the authority conferred upon him by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action."

The decree is reversed with costs, and the cause is remanded with instructions to enter a decree restraining defendants from rejecting and cancelling plaintiff's selection list, with directions to
30 vacate the order withdrawing the land in suit for a power site and to approve plaintiff's selection for patent.

Reversed and *remanded*.

40 Monday, April 23rd, A. D. 1917.

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CENTRAL PACIFIC RAILWAY COMPANY, A Corporation, Appellant,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office.

No. 2012.
April Term 1917.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and that this cause be and the same is hereby remanded to the said Supreme Court with instructions to enter a decree restraining defendants from rejecting and cancelling plaintiff's selection list, with directions to vacate the order withdrawing the land in suit for a power site, and to approve plaintiff's selection for patent.

per Mr. JUSTICE VAN ORSDEL,
April 23, 1917.

41 In the Court of Appeals of the District of Columbia.

CENTRAL PACIFIC RAILWAY CO., A CORPORATION, appellant, vs. FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office, appellees.	October term, 1916. No. 3012.

Petition for allowance of appeal.

Come now Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, appellees in the above-entitled cause, and show that on or about the 23rd day of April, 1917, this court entered a judgment herein in favor of the appellant and against the appellees, reversing a decree of the Supreme Court of the District of Columbia in favor of the appellees, in which judgment of the Court of Appeals certain errors were committed to the prejudice of the appellees, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellees further show that the said judgment of this court is subject to review by the Supreme Court of the United States under the provisions of the first paragraph of section 250 of the Judicial Code in that the jurisdiction of the trial court is in issue.

They further show that said judgment is subject to review by the Supreme Court of the United States under the provisions of the fifth paragraph of said section 250 in that the validity of an authority exercised under the United States and the existence and scope of a power or duty of the appellees, said appellees being officers of
42 the United States, are drawn in question.

They further show that said judgment is subject to review by the Supreme Court of the United States under the provisions of the sixth paragraph of said section 250, in that the proper construction of the acts of Congress under which appellant claims is drawn in question by the appellees, who were defendants below.

Wherefore, they pray the allowance of an appeal removing this case to the Supreme Court of the United States for the correction of the errors complained of; that a transcript of the record, proceedings, and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States; and that the mandate of this court be stayed until further order.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

43 In the Court of Appeals of the District of Columbia.

CENTRAL PACIFIC RAILWAY CO., A CORPORATION, appellant,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office, appellees.

October Term, 1916.
No. 3012.

Assignment of Errors.

Come now the appellees, by their attorneys, and say that in the record and proceedings of the court of appeals in the above-entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of said appellees in this, to wit:

1. That the court erred in reversing the decree of the Supreme Court of the District of Columbia in favor of the appellees and against the appellant and in remanding the cause for a decree restraining the appellees from rejecting and cancelling appellant's selection list and ordering the vacation of the order withdrawing the land in suit as a water-power site and the approval of appellant's selection of said land.

2. That the court erred in not affirming the decree of the Supreme Court of the District of Columbia herein issued.

3. That the court erred in holding that appellant railroad acquired a vested property right in or title to the land in controversy, as against the United States, by the act of filing its selection list embracing said land.

4. That the court erred in not holding that no property
44 rights in indemnity lands accrue to and vest in a railroad, under its grant, as against the United States, unless and until a selection list duly filed is approved by the Secretary of the Interior.

5. That the court erred in failing to hold that at the time when the railroad's selection list was presented to the Secretary of the Interior for approval or disapproval, the President of the United States having withdrawn the land in controversy under the authority of the act of June 25, 1910, the Secretary of the Interior was without power or authority to approve said selection list.

6. That the court erred in failing to find and to hold that Congress in the said act of June 25, 1910, expressly enumerated the particular classes of claims excepted from the operation of a withdrawal made by the President under the terms of said act and that a railroad indemnity selection is not among the enumerated classes.

7. That the court erred in failing to recognize and to hold that any withdrawal of land made by the President under the terms of said act of June 25, 1910, remains, by the express terms of the act, in force until revoked by the President or by an act of Congress.

8. That the court erred in remanding the cause with instruction to enter a decree to compel the Secretary of the Interior to vacate the order withdrawing the land in suit for power-site purposes when as a matter of fact and law, as by the record is disclosed, the withdrawal was the act of the President of the United States and not that of the Secretary of the Interior.

9. That the court erred in ruling that the Executive order made by the President of the United States withdrawing the land in controversy for power-site purposes, under the authority of said act of June 25, 1910, since the said order was made after the filing of the railroad's selection list, was made without lawful authority, is a mere nullity, and entitled to no consideration as against rights held to be already vested in said railroad.

45 10. That the court erred in holding that the United States is not a necessary party to this suit.

11. That the court erred in directing the Secretary of the Interior to approve the railroad's selection list, an act undeniably operating to pass title to the said railroad, in a suit to which the United States is not a party.

Wherefore, the appellees pray that for the errors aforesaid and other errors appearing in the record of said Court of Appeals, the said judgment of said Court of Appeals may be reversed, annulled, and for naught esteemed, and that said cause be remanded to the said Court of Appeals with instructions to affirm the decree of the Supreme Court of the District of Columbia in said suit rendered, or for such further proceedings in said suit as may be determined by the Supreme Court of the United States, to the end that justice may be done in the premises.

FRANKLIN K. LANE,
Secretary of the Interior.
CLAY TALLMAN,
Commissioner of the General Land Office.

By their attorneys:

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

(Endorsed:) No. 3012, Central Pacific Ry. Co. vs. Franklin K. Lane, Secretary of the Interior, et al. Petition for allowance of appeal and assignment of errors. Court of Appeals, District of Columbia. Filed May 5, 1917. Henry W. Hodges, Clerk.

46 Saturday, May 5th, A. D. 1917.

* * * * * * *

CENTRAL PACIFIC RAILWAY COMPANY, a corporation, appellant,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, and Clay Tallman, Commissioner of the General Land Office. } No. 3012.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States and to stay the mandate until further order in the above entitled cause, it is by the Court this day ordered that said petition be and the same is hereby allowed.

47 United States of America, ss:

To Central Pacific Railway Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this 5th day of May, in the year of our Lord one thousand nine hundred and seventeen.

CHAS. H. ROBB,
Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged:
A. A. HOEHLING, Jr.,
Counsel for Appellee.
May 18, 1917.

48 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 47, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Central Pacific Railway Company, a corporation, appellant, vs. Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, No. 3012, April

term, 1917, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 18th day of May, A. D. 1917.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.
By MONCURE BURKE,
Assistant Clerk.

(Indorsed on cover:) File No. 25968. District of Columbia. Court of Appeals. Term No. 509. Franklin K. Lane, Secretary of the Interior, and Clay Tallman, Commissioner of the General Land Office, appellants, vs. Central Pacific Railway Company. Filed May 21st, 1917. File No. 25968.

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